

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3673 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

SHYAM ALIAS RAMESH

KISHANCHAND ALIAS SUNDERLAL

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL, Advocate, for Petitioner

MR. K.C. SHAH, A.G.P. for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 27/08/96

ORAL JUDGEMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner - detenu has brought under challenge the detention order dated 29-3-1996 rendered by 1st respondent u/s 3(1) of the Gujarat Prevention of Anti - Social Activities Act, 1985

(Act No. 16 of 1985), for short 'the PASA Act'.

2. In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on criminal cases registered with different police stations in the city of Ahmedabad. The said cases relate to lurking house breaking and theft alleged to have been committed by the petitioner, in different localities of the city of Ahmedabad.

Sr No	Police Station.	CR No.	Cri. Sections.	Muddamal	Decison	Recovery
1.	2.	3.	4.	5.	6.	7.
1	Ellrise Bridge	567/93	454,380 of the IPC	Gold and silver ornaments with cash of value of Rs.29870/-	Pending in the Court.	Ornaments worth Rs. 16900/-
2	Sate-llite	375/93	"	Gold and silver ornaments with case, worth Rs.75200/-	Pending in the Court	Gold ingot worth Rs. 32000/-
3	Naroda	343/93	380 of IPC	Ornaments, cash and sarees worth Rs. 16950/-	Pending In the Court	Gold ingot and sarees worth Rs. 6310/-
4	Naran-pura.	531/93	379 of IPC	Luna Moped worth Rs. 10,000/-	Pending in the Court	Luna Moped worth Rs. 10000/-
5	Vejal-pur.	292/93	454,380 of IPC	Ornaments cash,& VCR worth Rs. 60,000/-	Pending in the Court.	Nil.
6	Vejal-pur.	123/94	"	Ornaments, and cash,	Pending in the	Gold ingot

			worth Rs. 14100/-	Court.	worth Rs. 6000/-
7	Vatva	543/95	"	ornaments and cloth worth Rs. 9000/-	Pending in the Court worth Rs. 5000/-
8	Vatva	544/95	"	Ornaments & cash worth Rs. 8200/-	Pending in the Court worth Rs. 2620/-

It is submitted on behalf of the petitioner that in CR No. 543/95 the petitioner was arrested on 7-11-95 and in C.R. No.544/95 he was arrested on 24-11-1995.

3. As stated above all the aforesaid offences/cases are pending at trial stage. Besides, the detaining authority has also placed reliance on the statements of the witnesses for the alleged incidents dated 5-3-1996 and 17-3-96. It has been alleged against the detenu that he has been threatening the witnesses and beating them in public place and rushing at the people collected at the time of incident with knife and thereby creating atmosphere of fear in the concerned localities. Considering these materials the detaining authority was of the view that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was fully necessary to pass an order of detention against him. This is how the impugned order came to be passed

4. I have heard learned advocate for the petitioner and the learned A.G.P. for the State. This petition is capable of being disposed of on the first submission made by Mr. S. R.. Patel, learned advocate for the petitioner and hence, it would not be necessary to deal with other contentions and grounds advanced to present the cause of the petitioner. It has been contended that the cases registered against the petitioner are all theft cases and they are yet to be established against the detenu. Assuming that the allegations made in the grounds of detention are true, in that event also, at the most, the detenu can be held responsible for committing breach of law and order and under no circumstances, he can be held responsible for breach of public order. Under the circumstances, the subjective satisfaction arrived at by the detaining authority to the effect that

with a view to maintaining public order, the detention of the detenu is necessary, is not genuine and therefore, the impugned order of detention is illegal and void. Reliance has been placed on the decision of this Court rendered on 3.7.96 (Coram : K.R. Vyas, J.) in Special Civil Application No.1610 of 1996. There also, individual charges were of theft. It was held that all the cases registered against the detenu there were for the alleged offences of lurking house trespass and theft filed against detenu. It was, therefore, held that there was no question of breach of public order and even considering the statements of the witnesses, the Court found that statements were vague and general and in absence of any cogent material against the detenu, it was held that the subjective satisfaction arrived at by the detaining authority would not be said to be genuine.

5. In my opinion, the present case would squarely stand covered by the aforesaid decision. Bearing in mind the facts of the case the submission of Mr. Patel merits acceptance. In the result, this petition is allowed and the impugned order of detention is quashed and set aside. The detenu - petitioner Shyam alias Ramesh Kishanchand alias Sunderlal Ahuja shall be forthwith set at liberty if he is not required for any other purpose and if he is not released from the judicial custody in other offence as stated hereinabove. Rule is made absolute accordingly.

7. It is made clear that this decision of release of the petitioner for prosecuting the detenu will not come in the way in particular individual cases being decided in accordance with law.

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